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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Ohler L. Kinney JR.

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EXAMINER

BUSHEY, CHARLES S

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/020,957	KINNEY ET AL.	
	Examiner	Art Unit	
	Scott Bushey	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 14 January 2003.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-35 is/are pending in the application.

4a) Of the above claim(s) 28-34 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-3,5,7-13,16-20,22,24-27 and 35 is/are rejected.

7) ☒ Claim(s) 4,6,14,15,21 and 23 is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2 shts</u>	6) <input type="checkbox"/> Other:

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DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-27, and 35, and further there within of Species A, as depicted by Figures 1-6 in Paper No. 6 is acknowledged. The traversal is on the grounds that the Examiner has not demonstrated serious burden. This is not found persuasive because applicant has not addressed the reasons for restriction as set forth by the Examiner in the restriction requirement. Accordingly, claims 1-27, and 35 have been examined herein on the merits, while claims 28-34 are withdrawn from further consideration.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. Claims 7, 8, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 7, 8, and 22, "said hot liquid distributor" lacks antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 1, 2, 8-10, 16-20, 22, 24-27, and 35 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Flaherty et al '610 (Abstract; Figs. 1 and 2; col. 2, lines 36-63; col. 4, lines 30-43).

Applicant should note that the preamble recitation of the cooling tower being of the cross-flow type has not been accorded patentable weight since no language in the body of the claims has been provided which would limit the structure of the frame to a cross-flow operation.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flaherty et al '610.

Flaherty et al '610 as applied above substantially disclose applicant's invention as recited by instant claim 3, except for a specific recitation that the top cover comprises two pieces. It would have been obvious for an artisan at the time of the invention, to construct the top cover of

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the reference from two pieces rather than a single piece, since such would allow for easier assembly of the top mounted fan structure, since as is well known within the art, it is often easier to construct and assemble multiple panels around a large central aperture, rather than constructing a single large panel with a central aperture where the single panel would tend to deform and potentially fail at narrow connection areas around the aperture.

8. Claims 1-3, 8, 9, 16-20, 22, 25, 27, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sinek.

Sinek (Figs. 1-3; col. 4, lines 27-29) substantially discloses applicant's invention as recited by instant claims 1-3, 8, 9, 16-20, 22, 25, 27, and 35, except for the shell having a sidewall orientation, i.e., rectangular rather than cylindrical, such that it possesses opposed pairs of side and end walls. Applicant should note that the connection of pipe (72) to both of the side wall and bottom walls provides a supplemental support structure as broadly recited by instant claims 9, 25, and 35. It would have been obvious for an artisan at the time of the invention, to modify the shape of the unitarily molded shell of Sinek from cylindrical to rectangular, since such would allow for the combination of multiple units within a modular structure, as is common within the cooling tower art. Note *In re Dailey et al*, 149 USPQ 47.

Applicant should note that the preamble recitation of the cooling tower being of the cross-flow type has not been accorded patentable weight since no language in the body of the claims has been provided which would limit the structure of the frame to a cross-flow operation.

9. Claims 5 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over either of Flaherty et al '610 or Sinek as applied to claim 1 above, and further in view of Phelps.

Flaherty et al '610 or Sinek as applied to claim 1 above each alternatively substantially disclose applicant's invention as recited by claims 5, and 11-13, except for the top cover having a liquid inlet or the fill having upright inlet and outlet faces.

Phelps (Figs. 1 and 2) discloses a cross-flow cooling tower wherein the fill has upright inlet and outlet faces, and the top cover has a liquid inlet therein (at 12 in Fig. 1). It would have been obvious for an artisan at the time of the invention, to modify the configuration of the cooling tower shell and the fill therein of either of the alternative primary references, to accommodate cross-flow airflow from the outside to a central open area below the top mounted fan assembly, in view of Phelps, since such would amount to an obvious change in shape or form, which would not effect the operation of the device in a substantive manner.


Allowable Subject Matter

10. Claim 7 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claims 4, 6, 14, 15, 21, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.



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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is (703) 308-3581. The examiner can normally be reached on Monday-Thursday 6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine R. Copenheaver can be reached on (703) 308-1261. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Scott Bushey
Primary Examiner
Art Unit 1724

CSB
8-28-03

csb
8/28/03